

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTONIO D CAMERON
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 16A-UI-09087-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/10/16
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the August 10, 2016, (reference 02) unemployment insurance decision that refused to accept the employer's protest because it was not timely filed. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2016. The claimant, Antonio Cameron, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Hormel Foods Corporation, participated through Melissa Silvia, claims specialist with Employers Unity; and Todd Richardson, hearing representative with Employers Unity. Employer's Exhibits 1 through 14 was received and admitted into the record. Department's Exhibit D-1 was received and admitted into the record.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed electronically via the SIDES system on July 14, 2016. (Exhibit 1) This email gave a deadline of July 25, 2016, for the employer to respond to the notice of claim.

The employer filed its protest on July 25, 2016. (Exhibit 4) The employer submitted a confirmation number it received from the SIDES system on July 25, 2016, at 6:11:31 p.m. showing the protest had been received by the agency. (Exhibit 4) The claimant's July 1, 2016, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's protest is timely.

Iowa Code § 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). The delay was due to an *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The employer filed a protest in a timely manner on July 25, 2016, but the agency incorrectly calculated the protest deadline when issuing the fact-finding determination. Therefore, the protest shall be accepted as timely.

DECISION:

The August 10, 2016, (reference 02) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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